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| 10/750,217 | 01/02/2004 | Kenneth K. Cyr | CRNL111419 | 6647 |
| 46169 7590 08/19/2008 SHOOK, HARDY & BACON L.L.P. Intellectual Property Department 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,217

Applicant(s)

CYR ET AL.

Examiner

NEAL R. SEREBOFF

Art Unit

3626

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-15, 18-25 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15, 18-25 and 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 6/24/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. In the amendment dated 5/22/2009, the following has occurred: Claims 1 and 7 – 9 have been amended. Now claims 1 - 5, 7 - 15, 18 - 25 and 28 - 30 are pending.
2. The Information Disclosure Statement (PTO-1449) submitted on 6/24/2008 has been considered.
3. The Examiner recognizes that Zimmerman et al., U.S. Pre-Grant Publication Number 2004/ 0098286 was commonly owned by the Applicant's invention. Therefore, this Office Action is a second, Non-Final Rejection.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The limitation, "correspondence rating" appearing in claims 8, 18 and 28 has no antecedent basis within the originally filed Detailed Description or Drawings.

Claim Rejections - 35 USC § 101

5. Claims 1 – 5 and 7 – 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 represents descriptions or expressions of programs and not a physical thing. (MPEP § 2106.01) "They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer

program and other claimed elements of a computer which permit the computer program's functionality to be realized." Claims 2 – 5 and 7 – 10 are rejected for the same reason as they are dependent upon claim 1.

6. Claims 11 – 15, 18 – 25 and 28 – 30 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876). The process steps in claims (11 – 15, 18 – 25 and 28 – 30) are not tied to another statutory class nor do they execute a transformation. Thus, they are non-statutory.

The Examiner notes that the amendment dated 12/7/2007 added "computer" into claims 21 – 25 and 28 – 30. This specific recitation of computer is addressed below.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1 – 5 and 7 – 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 was amended

to include the new limitation, “equivalent to those in the patient supply data and the care provider preference data.” The Examiner cannot find support for this amendment. Claims 2 - 5 and 7 - 10 are rejected for the same reason as they are dependent upon claim 1.

9. Claims 21 – 25 and 28 – 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims were amended to include “computer-readable” and “computer-executable.” There is nothing within the originally filed specification that supports this amendment. The computerized records in paragraph 9 refer to existing business practices and not to the disclosed invention. The hardware and software in paragraph 57 do not refer back to any preceding paragraph as nothing before this paragraph is described as either singular or as plural.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1 - 5 and 7 - 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 includes the new term of degree, “equivalent to those.” The claim does not specify whether the equivalence is in pricing, size, quality,

performance, color or some other performance factor. Claims 2 – 5 and 7 – 10 are rejected for the same reasons as they are dependent upon claim 1.

12. Claims 1 - 5, 7 - 15, 18 - 25 and 28 – 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1, 11 and 21 include the limitation “and/ or.” The Examiner is unsure whether this limitation should be examined as inclusive and required or should be examined as optional. The Examiner understands the limitation to be “or.” Claims 2 - 5, 7 - 10, 12 - 15, 18 - 20, 22 - 25 and 28 - 30 are rejected for the same reasons as the dependent upon their respective independent claims.

13. Claims 22 – 25 and 28 – 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims dependent upon independent claim 21; claim 21 is directed toward a method whereas the preambles of the dependent claims are directed toward “one or more computer-readable media.” The Examiner understands claims 22 – 25 and 28 – 30 to be directed toward methods.

Claim Rejections - 35 USC § 103

14. ***Claims 1 – 5, 7 – 10*** are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBusk et al, U.S. Patent Number 5,991,728 in view of Heimermann et al., U.S. Pre-Grant Publication Number 2002/ 0143692.

15. As per claim 1,
DeBusk, as understood, teaches a system for managing clinically related supply procurement, comprising:

- A first interface to receive patient supply data captured from at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), the patient supply data comprising items used and/or consumed during a clinical event (figure 10 and column 16, line 19 - 39);
- A second interface to receive care provider preference data for said clinical event from the at least one clinically related site (figure 7 and column 11, lines 4 – 16); and
- An analytic engine, the analytic engine communicating with the first interface and the second interface (column 17, lines 35 through column 18, line 40), the analytic engine also generating analytic reports that compare the alternative supply selection options (column 19, lines 4 - 30).

DeBusk does not explicitly teach the system comprising:

- An analytic engine, the analytic engine communicating with the first interface and the second interface, the analytic engine also comparing alternative supply selection options based on prices supplied by at least two vendors for equivalent to those in the patient supply data and the care provider preference data.

However, Heimermann teaches the system comprising:

- An analytic engine, the analytic engine communicating with the first interface and the second interface, the analytic engine also comparing alternative supply selection options based on prices supplied by at least two vendors for equivalent to those in the patient supply data and the care provider preference data (paragraph 161 where the bundle is posted and paragraph 325 where the determination is made).

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

16. As per claim 2, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system wherein the patient supply data further comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

17. As per claim 3, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system wherein the clinically related site comprises at least one of a hospital facility, a research facility and a government facility (column 12, lines 1 – 15 hospital).

18. As per claim 4, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system wherein the care provider preference data comprises a preference card (column 11, lines 4 – 16).

19. As per claim 5, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system wherein the preference card comprises selections for at least one of surgical devices, pharmaceutical selections and consumable material

selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

20. As per claim 7, DeBusk in view of Heimermann teaches the system of claim 1 as described above.

DeBusk does not explicitly teach the system comprising:

- The analytic engine comparing the alternative supply selection options based on volumetric pricing information as a function of alternative supply selections.

However, Heimermann teaches the system comprising:

- The analytic engine comparing the alternative supply selection options based on volumetric pricing information as a function of alternative supply selections (paragraph 276 where different volumes provide discounted amounts).

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

21. As per claim 8, DeBusk in view of Heimermann teaches the system of claim 1 as described above.

DeBusk does not explicitly teach the system comprising:

- The analytic engine comparing the alternative supply selection options based on correspondence ratings between care provider preference data and alternative supply selections.

However, Heimermann teaches the system comprising:

- The analytic engine comparing the alternative supply selection options based on correspondence ratings between care provider preference data and alternative supply selections (paragraph 221).

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

22. As per claim 9, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system comprising the analytic engine comparing the alternative supply selection options with patient supply data broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, and cost ranges (column 19, lines 4 – 37).

23. As per claim 10, DeBusk in view of Heimermann teaches the system of claim 1 as described above. DeBusk further teaches the system wherein the care provider preference data is

updated according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

24. As per claim 11, DeBusk teaches a method for managing clinically related supply procurement, comprising:

- Receiving patient supply data captured from at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), the patient supply data comprising items used and/or consumed during a clinical event (figure 10 and column 16, line 19 - 39);
- Performing comparisons between alternative supply selections (column 19, lines 4 - 30);
- Generating a comparative report that shows the alternative supply selections from two or more vendors (column 19, lines 4 - 30); and
- Storing the comparative report.

DeBusk does not explicitly teach the method comprising:

- Performing comparisons between alternative supply selections, wherein the comparisons comprise volumetric pricing information as a function of alternative supply selections from two or more vendors;

However, Heimermann teaches the method comprising:

- Performing comparisons between alternative supply selections, wherein the comparisons comprise volumetric pricing information as a function of alternative supply selections from two or more vendors (paragraph 161 where the bundle is posted and paragraph 325 where the determination is made and paragraph 276 where different volumes provide discounted amounts);

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

25. As per claim 12, DeBusk in view of Heimermann teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the patient supply data further comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

26. As per claim 13, DeBusk in view of Heimermann teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the clinically related site comprises at least one of a hospital facility, a research facility and a government facility (column 12, lines 1 - 15 hospital).

27. As per claim 14, DeBusk in view of Heimermann teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the care provider preference data comprises a preference card (column 11, lines 4 - 16).

28. As per claim 15, DeBusk in view of Heimermann teaches the method of claim 14 as described above. DeBusk further teaches the method wherein the preference card comprises

selections for at least one of surgical devices, pharmaceutical selections and consumable material selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

29. As per claim 18, DeBusk in view of Heimermann teaches the method of claim 11 as described above.

DeBusk does not explicitly teach the method wherein

- The comparative report comprises correspondence ratings between care provider preference data and alternative vendor supply selections.

However, Heimermann teaches the method comprising:

- The comparative report comprises correspondence ratings between care provider preference data and alternative vendor supply selections (paragraph 221).

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

30. As per claim 19, DeBusk in view of Heimermann teaches the method of claim 11 as described above. DeBusk further teaches the method comprising a step of generating

comparative reports on the patient supply data broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, and cost ranges (column 19, lines 4 – 37).

31. As per claim 20, DeBusk in view of Heimermann teaches the method of claim 11 as described above. DeBusk further teaches the method comprising a step of updating the care provider preference data according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

32. As per claim 21, DeBusk teaches a one or more computer-readable media having computer-executable instructions embodied thereon for performing a method for generating a clinically related supply policy, the method comprising:

- Receiving patient supply data captured from at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), the patient supply data comprising items used and/or consumed during a clinical event (figure 10 and column 16, line 19 - 39);
- Performing comparisons between alternative supply selections (column 19, lines 4 - 30);
- Generating a comparative report that shows the alternative supply selections (column 19, lines 4 - 30); and
- Storing the comparative report.

DeBusk does not explicitly teach the method comprising:

- Performing comparisons between alternative supply selections, wherein the comparisons comprise volumetric pricing information as a function of alternative supply selections;

However, Heimermann teaches the method comprising:

- Performing comparisons between alternative supply selections, wherein the comparisons comprise volumetric pricing information as a function of alternative supply selections (paragraph 161 where the bundle is posted and paragraph 325 where the determination is made and paragraph 276 where different volumes provide discounted amounts);

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

33. As per claim 22, DeBusk in view of Heimermann teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the patient supply data further comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

34. As per claim 23, DeBusk in view of Heimermann teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the clinically related site comprises at least one of a hospital facility, a research facility and a government facility (column 12, lines 1 - 15 hospital).

35. As per claim 24, DeBusk in view of Heimermann teaches the method of claim 21 as described above. DeBusk further teaches the method comprising receiving care provider preference data for said clinical event from the at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), wherein the care provider preference data comprises a preference card (column 11, lines 4 – 16).

36. As per claim 25, DeBusk in view of Heimermann teaches the method of claim 24 as described above. DeBusk further teaches the method wherein the preference card comprises selections for at least one of surgical devices, pharmaceutical selections and consumable material selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

37. As per claim 28, DeBusk in view of Heimermann teaches the method of claim 11 as described above.

DeBusk does not explicitly teach the method wherein

- The comparative report comprises correspondence ratings between care provider preference data and alternative vendor supply selections.

However, Heimermann teaches the method comprising:

- The comparative report comprises correspondence ratings between care provider preference data and alternative vendor supply selections (paragraph 221).

It would have been obvious to one of ordinary skill in the art to add this feature into DeBusk.

One of ordinary skill in the art would have added this feature into DeBusk

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.
- The motivation to improve the efficiency of the procurement process, resulting in monetary benefits comprised of both price savings on purchases, and savings from streamlined procurement administration; (Heimermann, paragraph 81).

38. As per claim 29, DeBusk in view of Heimermann teaches the method of claim 24 as described above. DeBusk further teaches the method wherein the method further comprises generating the comparative reports broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, vendor information and cost ranges (column 19, lines 4 – 37).

39. As per claim 29, DeBusk in view of Heimermann teaches the method of claim 24 as described above. DeBusk further teaches the method wherein the method further comprises updating the care provider preference data according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

Response to Arguments

40. Applicant's arguments with respect to claims 1-5 and 7-10 have been considered but are moot in view of the new ground(s) of rejection.

41. Applicant's arguments, see Rejections based upon 35 U.S.C. 103(a), filed 5/22/2008, with respect to the rejection(s) of claim(s) 11-15, 18-25 and 28-30 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of the updated rejections above.

Conclusion

42. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bodsworth et al, U.S. Pre-Grant Publication 2002/ 0095314

Wong, U.S. Pre-Grant Publication 2003/ 0149578

Heimermann et al., U.S. Patent Number 7,110,976

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEAL R. SEREBOFF whose telephone number is (571)270-1373. The examiner can normally be reached on Mon thru Thur from 7:30am to 5pm, with 1st Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. R. S./
Examiner, Art Unit 3626
8/11/2008

/Robert Morgan/
Examiner, Art Unit 3626/Robert Morgan/
Examiner, Art Unit 3626